IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11858 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MIRANDA TOOLS - Petitioner(s)

Versus

JAYESH M. PATEL - Respondent(s)

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Appearance :

MR KM PATEL for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR MS MANSURI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 18/8/2005

C.A.V. JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner Miranda Tools, a Division of Nicholas Piramal India Ltd. (hereinafter referred to as “the Management” for convenience) has challenged the legality and validity of the order dtd.14th May, 2004 passed by the Labour Court, Bharuch below Application Ex.11 in Reference (LCB) No.211 of 2000 by which the Labour Court has directed the management to lead evidence at the first instance to prove the departmental inquiry and the documentary evidences with regard to the departmental inquiry produced vide List at Ex.13 and thereafter, the respondent workman has to give oral evidence.

2. It appears from the record that the respondent herein (hereinafter referred to as

“the workman” for convenience) was serving as an Operator. By order dgtd.29th April, 2000, he was dismissed from service by the management. The workman raised an industrial dispute challenging the said order of dismissal which was referred to the Labour Court, Bharuch for its adjudication being Reference (LCB) No.211 of 2000. It also appears from the record that the workman submitted Statement of Claim and the case of the workman was that there was no departmental inquiry at all held by the management and that he was not permitted to participate in the inquiry. It also appears from the record that it was the case of the management that after the charge-sheet was served upon the workman, he did not participate in the departmental inquiry and thereafter the inquiry officer submitted inquiry report holding the charge proved against the workman and in fact it is denied by the management that no departmental inquiry was held as alleged by the workman. The management

produced certain documentary evidences vide List at Ex.13 and the workman objected to exhibiting the said documents which came to be produced vide List Ex.13. The workman submitted an application at Ex.11 to pass an appropriate order directing the management to first lead evidence and to prove that in fact departmental inquiry was held as alleged and to prove the documents by leading evidence at the first instance. The said application came to be objected by the management contending inter-alia that if the workman is challenging the legality and validity of the inquiry, in that case, he has to first lead the evidence and thereafter the management. Number of decisions were relied upon by both the sides and ultimately, after considering all the judgments cited at the bar on behalf of both the parties, the Labour Court Bharuch, by its order dtd.14th May, 2004 passed the impugned order directing the petitioner to prove that the departmental inquiry was in fact held and to prove the documents

produced vide list at ex.13 by leading evidence at the first instance and thereafter,the workman has to give his oral evidence. Being aggrieved by and dissatisfied with the order passed by the Labour Court, Bharuch dtd.14th May, 2004 below application Ex.11 in Reference (LCB) No.211 of 2000, the management has preferred the present petition under Articles 226 and 227 of the Constitution of India.

3. Mr.K.M. Patel, learned advocate appearing on behalf of the management has vehemently submitted that the order passed by the Labour Court directing the management to first lead evidence to prove the departmental inquiry is absolutely illegal and contrary to the provisions of the Indian Evidence Act. It is further submitted that when the workman is challenging the legality and validity of the departmental inquiry, then in that case, it is the workman who has to lead evidence at the first instance. It

is further submitted that if the order passed by the Labour Court is ordered to stand, the management will be required to lead evidence at the first instance to prove the factum of inquiry having held against the workman and thereafter the workman will give evidence to show how according to him the inquiry is vitiated or in breach of principles of natural justice and in that case, the management may in all probabilities lose the opportunity to lead evidence in rebuttal and show and establish that the point on which the inquiry is assailed by the workman in his oral evidence are not tenable and this may result into failure of justice. It is further submitted that the Labour Court has taken an erroneous view that it is for the management to lead evidence at the first instance and show that the inquiry held is legal and proper. It is also further submitted that mere making an allegation in the statement of claim or in the application Ex.11 that the inquiry record is got

up and not admitted by the workman, does not shift the onus of proof on the employer to first prove that the inquiry held against the workman is legal and proper. It is further submitted that it is the workman who has approached the court against the order of dismissal and is challenging the legality and validity of the departmental inquiry and therefore,it is for him to prove at the first instance by leading evidence to prove that the departmental inquiry is not legal and valid.

3.1. It is further submitted that since it is the workman who assailed the legality and validity of the inquiry and/or alleged breach of principles of natural justice with regard to the inquiry, it is for the workman to lead evidence at the first instance and show that the inquiry held against him is invalid and/or in breach of principles of natural justice. Therefore, it is submitted that the onus is on the workman to show

how the inquiry held against him is invalid or is in breach of principles of natural justice.

3.2. Mr.K.M. Patel, learned advocate appearing on behalf of the management relied upon the following judgments in support of his submissions;-

[i] reported in 2004(3) SCC 514 (Supreme Court Judgment) - (Relevant para Nos.47 to 50)

[ii] AIR 2005 SC 2185 (Supreme Court Judgment – relevant para 19 and 29 to 35).

[iii] AIR 1979 SC 1652 (Supreme Court Judgment) relevant para 31 at page 1665).

[iv] Uco Bank Vs. Presiding Officer and ors. Reported in 2000(I) CLR 105 (Supreme Court Judgment).

[v] Narang Talex and Dispersions Pvt.Ltd. Vs.S.V. Suvarna & Anr., reported in 1995 (1) LLJ 113 (Bombay High Court,relevant para 47 & 48).

[vi] Orissa Consumers Cooperative Federation Ltd. Vs.Presiding Officer,Labour Court and anr., reported in 2004 LLR 152 (Orissa High Court, relevant para 4,5 & 6).

[vii] Unreported judgment of this Court rendered in the case of Manmade Textile Research Association Vs. Amit K. Gandhi - Special Civil ApplicationNo.5602 of 2002.

3.3. Relying upon the aforesaid judgments, Mr.Patel, learned advocate appearing behalf of the management has vehemently submitted that it is for the workman to first enter into the Witness Box and to lead evidence at the first instance as he is challenging the legality and

validity of the inquiry and the burden of proof is upon him to first prove and show how the departmental inquiry is illegal and thereafter,the management will lead evidence to prove that how the departmental inquiry is legal and valid. Mr.Patel has submitted that by passing the impugned order the Labour Court has shifted the onus first upon the management to prove the legality and validity of the inquiry which is contrary to the above decisions and settled legal position. Therefore, it is requested to allow the present petition.

3.4. He has also further submitted that one who approaches the court has to lead evidence first. It is also further submitted that it is only in the pleadings by which the workman denies that no inquiry is held but no evidence is adduced and therefore, the workman has to enter into the Witness Box to prove that no inquiry is held and/or inquiry is defective and/or not legal

and valid . Therefore, it is requested to allow the present petition by quashing and setting aside the impugned order passed by the Labour Court.

4. Per Contra, Mr.M.S. Mansuri, learned advocate appearing on behalf of the workman has supported the impugned order passed by the Labour Court. He has resisted and opposed the present petition raising the following contentions;-

[i] The impugned order being an interlocutory order, the present petition challenging the same under Articles 226 and 227 of the Constitution of India is not maintainable as the learned Presiding Officer has not decided anything which is in any way prejudice to any party.

[ii] The Labour Court has tried to regulate the proceedings and it is for Labour Court to follow up the procedure exercising its powers and

jurisdiction vested under sec.11(1) of the Industrial Disputes Act, 1947 (hereinafter referred to as “the ID Act” for convenience).

[iii] The Labour Court is not bound by the provisions of the Code of Civil Procedure in view of the powers contained in ID Act and the abstract of doctrine of burden of proof is not applicable in adjudication of the industrial dispute.

[iv] In the present case, the dispute is not only with regard to the legality and validity of the departmental inquiry, but the existence of the departmental inquiry itself is questioned by the workman, as according to the workman the inquiry has not been held at all and the documents which are produced on behalf of the management to prove that the departmental inquiry was in fact initiated and held are forged and concocted and therefore, in such circumstances,

it is for the management at the first instance to prove by leading evidence that in fact departmental inquiry was held and thereafter the question with regard to the legality and validity of the departmental inquiry is required to be considered.

4.1. Mr.Mansuri has relied upon the following decisions in support of his submissions;-

[i] Bareilly Electrity Supply Company Ltd. Vs. Workmen and ors, reported in 1971 (2) LLJ 409 (Supreme Court Judgment).

[ii] Sitaram Sugar Mills and Deoria Sugar Mills Ltd. Vs. Their workmen, reported in Supreme Court Labour Judgment 1952-83 Vol.2 page 392.

[iii] Grindlays Bank Limited Vs. Central Government Industrial Tribunal and ors., reported in 1981 (I) LLJ 327.

[iv] M/s.Echjay Industries Pvt.Ltd Vs. Mahavirsinh Shivubha and ors., reported in 1993 (2) GLR 1234 (relevant para 15 page 1245).

[v] Delhi Transport Corporation Vs. Virender, reported in 2005 (II) LLJ 402 (Delhi High Court).

[vi] Mitra A.B. Vs. P.O.,III Industrial Tribunal and ors., reported in 1999 (2) LLJ 1243. (Calcutta High Court).

[vii] Unreported order of the Gujarat High Court dtd.28/4/1994, rendered in Special Civil Application No.6231 of 1994.

4.2. In view of the above decisions, Mr.Mansuri, learned advocate appearing on behalf of the workman has made the following contentions;

[i] Mr.Mansuri has submitted that in the facts and circumstances of the case when the existence of the departmental inquiry itself is questioned and it is not a mere question challenging the legality and validity of the departmental inquiry, the Labour Court was justified in directing the management to first lead evidence at the first instance to prove the factum of departmental inquiry and to prove the documents which are produced vide List at Ex.13.It is further submitted by him that if the order passed by the Labour Court impugned in the present petition is considered in toto it is not that the Labour Court has directed the management to lead the evidence at the first instance to prove the legality and validity of the departmental inquiry. The Labour Court while passing the impugned order and in the facts and circumstances of the case has directed the management to prove the documents produced vide list Ex.13 to prove the factum of departmental

inquiry and therefore, it is submitted that the judgment cited at the bar on behalf of the management are not applicable to the facts of the case on hand and the same are distinguishable and therefore, it is requested to dismiss the present petition.

5. I have heard the learned advocates appearing on behalf of the parties.

6. Firstly this Court would like to deal with the judgments cited at the bar on behalf of the parties.

6.1. In the case of the Manager, R.B.I., Bangalore (Supra), where the dispute was with regard to completion of 240 days raised by the workman, wherein the Honourable Supreme Court has held that the pleadings are not substitute for proof and onus is upon the workman to prove by leading the evidence and producing the

documentary evidence that he had worked for 240 days.

6.2. In the case of Nilgiri Cooperative Marketing Society Limited (Supra), the dispute was whether the employee is a workman within the meaning of sec.2(s) of the Act or not, where the relationship of employee and employer itself was disputed, wherein the Honourable Supreme Court has held that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

6.3. In the case of Uco Bank (Supra), considering the scope of sec.11of the ID Act and the procedure to be followed by the Industrial Tribunal and in a case where the dispute was with regard to the inquiry being not fair and proper and where the order of dismissal was challenged, wherein the Delhi High Court has quashed and set aside the order passed by the Tribunal asking the

employer to lead evidence first, in a dispute raised by the workman against his dismissal and it is held by the Delhi High Court that it is for the workman who challenges the legality and validity of the dismissal order to produce the evidence to prove its illegality. And initially the burden lies upon the workman to prove that the inquiry conducted against him is not fair and proper.

6.4. The Bombay High Court in the case of Narang Latex. Pvt.Ltd. (Supra) has held that it would be for the workman to lead evidence first to show that the domestic inquiry is wrongful.

6.5. The Orissa High Court in the case of Orissa Consumer Cooperative Federation Limited (Supra) wherein the workman raised an industrial dispute challenging his dismissal order from service and when the dispute was referred to the Labour Court for its adjudication and the Labour

Court directed the Management to adduce the evidence at the first instance, the Orissa High Court has held that if a party challenges the legality of an order, the burden lies upon him to prove the illegality of the order and if no evidence is produced the party invoking the jurisdiction must fail and since th workman seeks industrial adjudication it is for him to adduce his evidence.

6.6. In an unreported decision of the Gujarat High Court in a case of Manmade Textile Research Association (Supra), learned Single Judge of this Court quashed and set aside the order passed by the Labour Court by which the Management was required to prove the fact about the legality and validity of the Departmental inquiry by leading evidence at the first instance.

6.7. In the case of Sitaram Sugar Mill and Deoria Sugar Mills Ltd. (Supra), the Honourable

Supreme Court has held that in the adjudication of industrial matters it would be unreasonable to rely on the technical or academic consideration of onus. In the said case before the Honourable Supreme Court, the dispute was with regard to payment of bonus to the head office staff, wherein the Honourable Supreme Court has observed as under;-

> “It would have been very easy for the appellant to produce the letters of appointment given to the employees at the head office. The appellant might also have conveniently produced the roll of he employees engaged by its managing agents. It is true that Mr.Veda Vyasa contended that the onus was on the respondent to show that the share of the bonus had been wrongfully paid to the employees at the head office. In our opinion, it would be unreasonable to rely on technical or academic considerations of onus in such matters. Besides,it is obvious that the relevant facts are within the knowledge of the appellant and cannot possibly known to the respondent. Mr.Veda Vyas also suggested that the respondents could have been called upon by the appellant to produce the relevant documents. That again is a technical plea the importance of which cannot be exaggerated in industrial proceedings. The appellant knew that its workmen in the factories

had been consistently raising an objection against the payment of any bonus to the head office staff. In such a case it was clearly the duty of the appellant to produce all material evidence within its possession. That being so, we do think that the appellant can successfully challenge the finding of fact recorded by the tribunal that the persons i question are not employed in or under the appellant's concern."

6.8. In the case of Grindlays Bank Limited (Supra), the Honourable Supreme Court in para 7 and 8 has held as under;-

"7. Sub-sections (1) of S.11 of the Act, as substituted by S.9 of the Industrial Disputes (Amendment & Miscellaneous Provisions) Act, 1956 is in these terms :

"11.(1). Subject to any rules that may be made in this behalf, an Arbitrator, a Board, Court,Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think fit."

The word "shall follow such procedure as the arbitrator or other authority may think fit are of the widest amplitude and confer ample power upon the Tribunal and other authorities to devise such procedure as the justice of the case demands. Under cls.(a) to (c) of sub-sec(3) of S.11, th Tribunal and other

> authorities have the same powers as are vested in civil Courts under the Code of Civil Procedure, 1908, of (a) enforcing the attendance of any person and examining him on oath (b) compelling the production of documents and material objects and (c) issuing commissions for the examination of witnesses. Under cl(d) thereof, the Tribunal or such other authorities have also the same powers as are vested in civil Courts under the Code of Civil Procedure, 1908 in respect of such other matters as may be prescribed. Although the Tribunal or other authorities specified in S.11 are not Courts but they have the trappings of a Court, and they exercise quasi-judicial functions.

8. The object of giving such wide powers is to mitigate the rigour of the technicalities of the law, for achieving the object of effective investigation and settlement of industrial disputes, and thus assuming industrial peace and harmony. The discretion thus conferred on these authorities to determine the procedure as they may think fit, however, is subject to the rules made by the "appropriate Government" in this behalf. Part III of the Industrial Disputes

(Central) Rules, 1957 makes rules in this behalf. Rules 9 to 30 are the relevant rules regulating procedure. State Government too have made their own corresponding rules. Except to the extent specified in sub-s.3 of S.11 of the Act and the rules framed thereunder, the provisions of the Code of Civil Procedure, 1908 are not applicable to proceedings before the authorities mentioned in sub-s.(1). The provisions of the Evidence act, in their strict sense, likewise do not apply to proceedings before the authorities. Nevertheless, all these authorities being quasi-judicial in nature objectively determining matters referred to them, have to exercised their discretion in a judicial manner, without caprice, and according to the general principles of law and rules of natural justice."

6.9. The Division Bench of this Court in the case of M/s.Echjay Industries Pvt.Ltd. (Supra) in para 15 has held as under;-

> “15. We, therefore, sum-up our views as follows:
> “Production of the inquiry papers in the earlier proceedings under Sec.33(2)(b) would not be sufficient to debar the Labour Court from calling upon the employer to produce his evidence in view of the powers conferred by Secs.10 and 11 of the Act as well as Rules 17, 26, 27 & 28 which are to be exercised for the purpose of investigation and settlement of Industrial Dispute as provided in the Preamble of the Act. The order of approval granted under Sec.33(2)(b) does not conclude the question of legality of termination of employment. The Labour Court is not bound by the provisions of the Code of Civil Procedure in view of the powers contained in the aforesaid statutory provisions and the abstract doctrine of burden of proof is not applicable, in adjudication of Industrial dispute as pointed out by the Supreme Court, particularly in view of the helpless and migratory character of the workmen. Even if it is assumed for the sake of arguments that issues have to be raised in view of the statement and written statement, the result would be that the order regarding closing the right of the workmen to lead evidence may have to be set aside and they may have to be given such right after directing the Labour Court to raise issues. Since the

> material evidence in the form of papers relating to inquiry are in possession of the employer, the Labour Court committed no error in calling upon the employer to produce such evidence. The state of making any observation or rendering any finding regarding award to be made by the Labour Court has not arisen at all, since the workmen also rely on the evidence in exclusive possession of the employer."

6.10. The Calcutta High Court in the case of Mitra A.B. (Supra) has held that when the Industrial Tribunal is called upon to decide the validity of the departmental inquiry as preliminary issue, the onus of proof such of validity is on employer who wants to rely on fairness and domestic inquiry in defence.

6.11. The learned Single Judge of this High Court dismissed the Special Civil Application No.6231 of 1994 presented at the instance of the management,confirming the order passed by the Labour Court, by which in a case where the management has held inquiry ex-parte and the Labour Court held the departmental inquiry as

illegal by observing that when there is an ex-parte inquiry, it is the duty of the management to prove the documents of departmental inquiry.

7. Now considering the facts on hand, the question which arises for consideration by this Court is whether the order passed by the Labour Court impugned in the present petition, by which the Labour Court directed the management to prove documents produced vide List at Ex.13 and to prove the departmental inquiry at the first instance by the management by leading evidence is just, legal and proper or not and/or the same is required to be interfered with by this Court in exercise of the powers under Articles 226 and 227 of the Constitution of India.

8. It is the case on behalf of the workman that no inquiry has been held at all and the workman was not permitted to take part in the departmental inquiry and the documents which are

produced by the management vide list at Ex.13 to show that in fact the departmental inquiry was held and the workman did not participate in the inquiry are, got-up and concocted documents. Thus, the existence of the departmental inquiry itself is questioned by the workman and therefore, by application Ex.11, the workman requested the Labour Court to direct the management to prove the documents produced by the management at List Ex.13 and to prove the factum of departmental inquiry, directing the management to lead evidence at the first instance. It is the contention on behalf of the workman that only after the factum of departmental inquiry alleged to have been held is proved by the management by leading evidences then and then only, the question of legality and validity of the departmental inquiry is required to be considered. Therefore, it is submitted that the Labour Court has not committed any error in directing the management to first lead evidence

to prove the factum of departmental inquiry and to prove the documents produced by the management vide List Ex.13. To prove the factum of departmental inquiry, it is the case of the management that they have conducted the departmental inquiry, however, the workman did not participate in the inquiry and to support their contention that in fact departmental inquiry has been held, the management wanted to prove the same by producing documents vide List at Ex.13 and therefore, it is the case on behalf of the management that when the workman has raised an industrial dispute and is challenging the legality and validity of the departmental inquiry, the onus is upon the workman to prove the departmental inquiry is not legal and valid as it is he who alleges the departmental inquiry as illegal and/or not fair.

9. Considering the aforesaid facts on hand, the question is not with regard to the legality

and validity of the departmental inquiry only, but the question is only with regard to factum of departmental inquiry and existence of the departmental inquiry. The management wanted to produce the documents vide List at Ex.13 to prove that in fact departmental inquiry was held, which is disputed by the workman and even the workman has objected to exhibiting those documents produced vide List Ex.13. Now, when the management emphasis that they have held the departmental inquiry against the workman and the workman did not participate in the inquiry, the onus is upon the management to first prove the factum of departmental inquiry by leading evidence at the first instance and to prove the documents produced by the management vide List Ex.13. Therefore, the contention raised on behalf of the management that by directing the management to lead evidence at the first instance to prove the documents produced vide List Ex.13 and to prove the factum of departmental inquiry

being held, the onus is wrongly shifted upon the management, has no substance. In the judgments cited at bar on behalf of the managements, the workman had challenged the legality and validity of the departmental inquiry and in none of the judgments, the dispute was with regard to the existence and factum of holding the departmental inquiry. In all the decisions, on which reliance has been placed on behalf of the management, the workman has challenged the legality and validity of the departmental inquiry and has challenged the order of dismissal by approaching the Labour Court / Industrial Court, and, therefore, the burden will be upon the workman to lead evidence at the first instance to prove how the departmental inquiry is not legal and valid, as he is alleging that the departmental inquiry is not legal and valid. However, as stated hereinabove, in the present case the dispute is not only with regard to the challenging the legality and validity of the departmental inquiry

but the factum of departmental inquiry itself is questioned and/or disputed and therefore, it is for the management to to first lead the evidence to prove that in fact the departmental inquiry was held but the workman did not participate in the departmental inquiry and after having proved that in fact departmental inquiry was held and the workman did not participate in the inquiry, the question of legality and validity of the said departmental inquiry is required to be considered thereafter. Under the aforesaid circumstances, it cannot be said that the impugned order passed by the Labour Court is in any way erroneous and/or contrary to the settled legal position. As held by the Honourable Supreme Court as well as by this Court, the provisions of Evidence Act and the Civil Procedure Code, 1908 with regard to burden of proof, are not applicable in strict sense. Apart from that, in the facts and circumstances, directing the management to first prove the documents produced vide List at Ex.13

by which the management wanted to establish the factum of departmental inquiry and to prove holding of the departmental inquiry by the management at the first instance by leading evidence, cannot be said to be illegal and/or contrary to the provisions of the Evidence Act, Code of Civil Procedure and/or settled legal position and therefore, no interference is called for.

10. The contention on behalf of the petitioner management that by virtue of the impugned order,the Labour Court has directed the management to lead evidence at the first instance to prove the legality and validity of the departmental inquiry, is not correct and the same cannot be accepted. In fact, the workman objected to exhibit the documents produced by the management vide List at Ex.13 to prove the factum of holding the departmental inquiry and it was the contentions on behalf of the workman that as

such no departmental inquiry is held and the documents produced by the management vide List at Ex.13 to show that the departmental inquiry was held but the workman did not participate in the departmental inquiry, are got-up and concocted documents. Under the circumstances, the contention on behalf of the management that the Labour Court has materially erred in shifting the onus upon the management to lead evidence at the first instance to prove the legality and validity of the departmental inquiry, cannot be accepted under the aforesaid facts and circumstances.

11. The judgments cited on behalf of the management at bar as aforesaid, are of no assistance to the management and they are distinguishable on facts as stated hereinabove and the same are not applicable to the facts of the case on hand.

12. No apparent error is committed by the Labour Court while passing the impugned order which calls for any interference at the hands of this Court in exercise of the powers under articles 226 and 227 of the Constitution of India.

13. For the foregoing reasons, the petition fails and the same is hereby rejected. The impugned order dtd.14th May, 2004 passed by the Labour Court, Bharuch below Application Ex.11 in Reference (LCB) No.211 of 2000 is hereby upheld. Rule is discharged with no order as to costs. Ad-interim relief granted earlier stands vacated forthwith.

(M.R. SHAH, J.)

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